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RC-191

September 9, 1991

Certified Mail No. P 882 497 008

Office of the Attorney General
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711-2548

ATTENTION: Opinions Committee

Dear Sir:

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Opinion Committee

Pursuant to V.T.C.A., Government Code section 402.043, I request your opinion in regard to the following questions that have arisen in my jurisdiction with respect to the legality of Denton County Bail Bond Board concerns.

A. ISSUES PRESENTED

1. What is the total bonding power that a bondsman may execute bail bonds when the licensee is a corporation?
2. Is the irrevocable letter of credit the only security a corporation must provide upon the bail bond board's tentative approval of the application, or must the corporation also do one of the following: (1) deposit a minimum of \$50,000 in a cashier's check, C.D., or cash, or (2) execute deeds of real property in trust to the board which exceed \$50,000 when the county's population is at least 250,000?
3. If the irrevocable letter of credit is the only security necessary for a corporation to execute bonds, then how much money must the letter of credit cover?

ATTORNEY GENERAL OPINION
BAIL BOND BOARD

4. Must the letter of credit be of unlimited time or must the sheriff accept a letter of credit with a time limit (date)?
5. Does the Bail Bond Board have the authority to question the appraisal value of the real estate the applicant intends to convey in trust to the board?
6. Does the Bail Bond Board have the authority to obtain an independent appraisal value of the real estate the applicant intends to convey in trust to the board?
7. Does the Bail Bond Board have the authority to require the real estate the applicant intends to place in trust with the Board be located within the County of Denton, Texas?
8. Does the Bail Bond Board have the authority to require that the renewal application for a license include a current re-appraisal of the real estate the applicant intends to place in trust with the Board?

B. Analysis and Authorities

Denton County has a population of 273,000, therefore the \$50,000 minimum amount in section 6(f)(1) and (2) apply to applicants of bail bond licenses in Denton County, Texas. All references to section numbers below are found in V.T.C.S., Article 2372p-3. Each number below correlates with the numbered issue above.

1. Total Bonding Power. Section 6(g) states that no bondsman may execute bail bonds that exceed 10 times the value of the property held as security on deposit [section 6(f)(1)] or held in trust [section 6(f)(2)]. This section places a limitation on the amount of bail bonds a bondsman may execute. However, section 7(a) states that section 6(g) does not apply to a corporate surety, but that such corporation shall meet the other applicable requirements set forth in section 6. Section 7(b) states that the certificate of authority to do business in this state issued by the State Board of Insurance to a corporation shall be conclusive evidence as to the sufficiency of the security, the corporation's solvency, or its credits. Op. Tex. Att'y Gen. No. JM-799 (1987) states a bail bond board is not authorized to set a limit on bonds a corporate surety may provide. Thus, it seems that there is no limit on a corporation's bonding power if the State Board of Insurance has issued the corporation a certificate of authority to do business within the state, and the corporation meets the other applicable requirements set forth in section 6.

2. Corporation Security. Section 6(f) states that upon an application being tentatively approved, the applicant shall (1) deposit at least \$50,000 (cashier's check, C.D., or cash) with the county treasurer; or (2) execute real property deeds valued at least \$50,000 in trust to the Bail Bond Board. Section 6(f)(3) is an independent sentence, which specifically applies to corporations and states:

"If the licensee is a corporation, it shall furnish to the sheriff an irrevocable letter of credit as a cash equivalent to satisfy any final judgment of forfeiture that may be made on any bonds on which the corporate licensee is surety."

Section 7(a) states that a corporation authorized by law to act as a surety must meet all the applicable requirements prescribed by section 6 before being acceptable as a personal surety on a bail bonds. Section 6(a) states that any person desiring to act as a bondsman shall file an application with the County Bail Bond Board for a license. The section goes on to state that the application shall contain such information the board prescribes, including a list of requirements set by statute. Included in this list is the requirements of "a statement listing any nonexempt real estate ... that the applicant intends to convey in trust... if the license is granted" [section 6(a)(4)]; and "a statement indicating the amount of cash or cash value of any certificate of deposit or cashier's checks which the applicant intends to place on deposit ... if the license is granted" [section 6(a)(5)]. One argument is that the corporation must comply with sections 6(a)(4) and (5) in order to act as a surety on bail bonds because under section 2(1) a "person" means a corporation, and thus subsections (4) and (5) are applicable requirements. If this argument is true, then it would be within the board's authority to require the corporation to either deposit security or convey real estate in addition to the requirement to furnish a letter of credit. The other argument is that because section 6(f)(3) is an independent sentence [from section 6(f)(1) and (2)] which deals specifically with corporations, then the corporation has an option of choosing what type of security to furnish (security deposit, real estate, or letter of credit). Accordingly, it seems the second argument would be correct because the statute added another requirement just for corporations.

3. Letter of Credit Amount. Section 6(f)(3) states the corporation shall furnish a letter of credit as a cash equivalent to satisfy any final judgment of forfeiture made on any corporate licensee bond. The problem with determining the amount of the letter of credit is that at the time of issuing a bail bonds license the amount of any final judgments are unknown. However, there is no problem if section 6(f)(3) means the corporation does not have to furnish a letter of credit until a final judgment is

rendered. This part of the statute is confusing because section 6(f) states upon notice that the application has been tentatively approved, the applicant shall then either (1) or (2); whereas, section 6(f)(3), an independent sentence, states the corporation shall furnish the letter of credit. It seems that the only requirement is that the letter of credit should be furnished upon the corporation's application being tentatively approved. Since there is no final judgments of forfeiture at that time, there seems to be no minimum or maximum amount the irrevocable letter of credit should be. Since the statute does not state any specific amount, then the Bail Bond Board should set a minimum amount because section 5(f)(1) grants the Bail Bond Board the power to exercise any powers necessary to the administration of this act.

4. Letter of Credit Time Limit. Section 6(f)(3) states nothing regarding a date which would limit the time period the letter of credit is valid. Because this is not addressed within the statute it seems the Bail Bond Board under section 5(f)(1), should prescribe a rule of whether the letter of credit is acceptable if it has a date. The argument for non-acceptance of a dated letter of credit is that the bail is not preserved if the letter expires before any final judgment of forfeiture is ordered. The intent of this statute is that the right of bail be preserved, and unless the Bail Bond Board can regulate the type of letter the sheriff has to accept the bail may not be preserved.

5. Value of Appraisal and 6. Independent Appraisal Section 6(a)(4) states that an applicant must list any nonexempt real estate on the application for a bail bonds licensee which the applicant intends to convey in trust as security. Section 6(a)(4)(b) states that for each parcel of real estate listed there shall be current statements from each applicable taxing unit indicating there are no outstanding tax liens against the property and indicating the net value of the property based on a current appraisal made by a real estate appraiser. There is no mention of whether the real estate appraisal value can be questioned. Likewise, there is no mention of whether the Bail Bond Board can obtain an independent appraisal value. The argument that the Bail Bond Board would have the authority to question the appraisal value listed and to obtain an independent appraisal value rest within section 5(f)(1) and (2). Subsection (2) states that Bail Bond Board has the power and duty to conduct hearings and investigations and make determinations respecting the issuance of licenses, and only issue licenses if the applicants qualify under this Act. Accordingly, the Bail Bond Board has the authority to question the appraisal value listed on the application. Subsection (1) states the Bail Bond Board has the duty to exercise any powers incidental or necessary to the administration of this Act. In order for the Bail Bond Board to make an informed determination on whether or not the listed appraisal value is current and/or correct, the Bail Bond

Board should have the power to obtain an independent appraisal. Because the framework of the appraisal requirement is already set up in the statute, and because rules are necessary to implement this Act concerning the appraisal requirement, the Bail Bond Board should have the authority to make these rules.

Bexar County Bail Bond Board vs. Deckard, 604 S.W. 2d 214 (Tex. App. - San Antonio 1980, no writ) stated that in order for the Bail Bond Board's regulation to be considered a part of the regulatory statute (referring to V.T.C.S. Art. 2372p-3), the regulation must come within the framework of the power delegated. This case also stated that there is no language in the statute granting power to make additional qualifications as a prerequisite to obtaining a license. In this situation the appraisal value requirement has been laid within the framework of the statute, however it needs additional rules for the act to be implemented properly. Section 5(f)(1) grants the Bail Bond Board the power to prescribe and post any rules necessary to implement this Act, therefore the Board should have the authority to question the listed appraisal value and the authority to obtain an independent appraisal.

7. Denton County Real Estate. Section 6(a)(4)(A) states the applicant must list the legal description of the real estate the applicant intends to convey in trust as security if a license is granted. Section 6(f)(2) states upon the tentative approval of the license application, the applicant must execute in trust deeds to the property listed under section 6(a)(4). Section 6(f)(2) goes on to state "...the board shall file the deeds of trust in the records of each county in which the property is located, ..." It can be argued that the Bail Bond Board has the authority under section 5(f)(1), to regulate in which county the real estate must be located. The framework is found in section 6(a)(4) which states the applicant must list the real estate he intends to convey in trust as security. However, the other argument is that the Bail Bond Board has no authority to require the real estate to be located in a specific county (Denton County) because section 6(f)(2) states the board shall file the deed in the county the property is located. This seems to imply that any property which the applicant owns, regardless of which county it is located in, can be conveyed. Administrative agencies adopted rules and regulations may not impose additional burdens, conditions or restrictions in excess of or inconsistent with statutory provisions. Bexar County Bail Bond Board vs. Deckard, 604 S.W.2d 214, 216 (Tex. App. - San Antonio 1980, no writ); Johnson vs. Firemen's Insurance Co. of Newark, New Jersey, 398 S.W.2d 318, 320 (Tex. Civ. App. - Eastland 1965, no writ); Kelly vs. Industrial Accident Board, 358 S.W.2d 874, 876 (Tex. Civ. App. - Austin 1962, writ ref'd). The requirement that the property be located in one specific county seems to impose additional burdens and is inconsistent with the statutory provisions.

8. Renewal Application Appraisal Value. Section 8(a) states "The application for renewal shall have the same form and content as an application for an original license under this Act." Section 6(a)(4)(B) states the form and information that the original application shall contain, including current statements from each applicable taxing unit showing no outstanding tax liens and the property value according to a current appraisal. Thus, the Bail Bond Board as a regulatory agency [section 5(f)(1)] has the duty to require a current appraisal on the real estate listed on the renewal application.

C. Conclusions

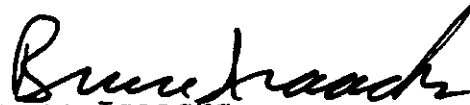
1. A corporation has unlimited bonding power.
2. A corporation must provide a irrevocable letter of credit to the sheriff and may deposit security or deed real estate in trust to the board if it wishes.
3. The Bail Bond Board may prescribe a minimum amount the letter of credit must be before issuing the license.
4. The Bail Bond Board may prescribe whether the sheriff has to accept a dated letter of credit.
5. The Bail Bond Board may question the listed appraisal value.
6. The Bail Bond Board may obtain an independent appraisal value.
7. The Bail Bond Board does not have the authority to require the applicant to convey in trust real estate located only in Denton County.
8. The Bail Bond Board has the duty to require a current appraisal of real estate on the renewal application.

D. Certifications

I hereby certify that these questions of law affect matters within the jurisdiction of my office, and constitutes a matter in which the State is "interested". I also certify that this matter is not currently in litigation.

Should you require additional information, please contact Pam Wells, at (817) 383-8399 or 1-800-346-3189.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce Isaacks".

Bruce Isaacks
Criminal District Attorney
Denton County, Texas